

be cases in which this doctrine will grip and hold an individual clothed with absolute power and yet not bind a municipal corporation to the act or neglect of its statutory agent. In the latter the question must be met: "What were the powers conferred upon the council?" But aside from this there are no equities in support of it. The evidence shews that the council, if it was the act of council, simply blundered. It is shewn, too, that Mr. Clary, for whom the plan was made and filed, never intended that it should touch or interfere with the highway and did not know in fact that the subdivision embraced land covered by the highway. These are not perhaps determining points in themselves. But they are secondary considerations when enquiring as to the vital points connected with a plaintiff invoking estoppel.

The action is without merits. The roadway was an open travelled and conspicuous highway—visible to everybody. The plaintiff knew of it, saw it, enquired about it, and knew that the defendants claimed it before he bought. He saw the boundary fence and must be taken to have known that what he bought outside that line of posts was not land but a law suit, with its precarious results. I cannot give judgment for the plaintiff upon the ground of estoppel. It was not shewn that the plaintiff as a matter of fact knew about this plan at all, but being filed he has perhaps a right to say he had legal notice of it. Take it in this way and what had he the right to conclude? That the street not being shewn upon the plan was surrendered or closed? I don't think so. Sudbury registrations are under the Land Titles Act. Under section 26 of the Act in force at the filing of this plan, R. S. O. ch. 138, and under section 24 of the present Act, all registered lands, without any notice thereof upon the registry, are to be taken to be subject to "any public highway, any right of way, water-courses, and right of water and other easements," subsisting in reference thereto. And in 1906, under the Revised Statute, sec. 109, it was not necessary, or it is now under the Land Titles Act of 1911, section 105, that the plan should shew "all roads, streets, . . . or other marked topographical features within the limits of the land so subdivided." In fact, as a matter of law at that time and under that Act, subject to one exception only, the land owner without consulting the council could file any plan he liked. The exception is to be found in section 110 of R. S. O. ch. 138, and section 630 of the Muni-